

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 3:08-CR-90
V.)	(VARLAN/GUYTON)
)	
JEFFREY LYNN MATHIS, JR.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. On November 3, 2008, this criminal action came before the Court for a hearing on all pending motions, including various motions filed by the defendant [Docs. 19, 20, 21, 22, 24] and the government's Motion to Continue. [Doc. 27] Assistant United States Attorney Hugh B. Ward, Jr. appeared on behalf of the government and attorney Kelly S. Johnson appeared on behalf of the defendant, who was also present.

During the hearing, attorney Johnson advised the Court that, because of recently obtained information, he would be seeking leave of the Court to file a motion to suppress, and that he hoped to be able to file such a motion in approximately one week. The Court takes defense counsel's request as an oral motion for leave to file a motion out of time. For good cause shown, the defendant's oral motion is **GRANTED**. The defendant shall have until and including November 14, 2008, to file his motion to suppress, and the government shall have until and including November 28, 2008, to file a response to the motion. The Court will conduct a hearing on all pending motions on December 3, 2008, at 9:00 a.m.

During the hearing, the parties agreed that it would be necessary to continue the trial in this matter, currently set for November 10, 2008, to allow the Court to consider the additional motion to be filed by the defendant. Accordingly, the Court finds that the ends of justice served by a continuance outweigh the interest of the defendant and the public in a speedy trial. See 18 U.S.C. § 3161(h)(8)(A). Specifically, the Court finds that failure to grant a continuance under these circumstances would deny the defendant the reasonable time necessary for effective preparation for trial, resulting in a miscarriage of justice. See 18 U.S.C. § 3161(h)(8)(B)(i),(iv). The Court finds that additional time is needed: to allow the defendant to file the additional motion; for the Court to hear argument on and rule on all pending motions; for the District Court to rule on any objections to any Reports and Recommendations the Court might issue; and for both parties to then prepare for trial based upon the resolution of any such motions. The Court finds that this could not take place before the November 10, 2008, trial date, or in less than approximately three months. Therefore, the government's motion to continue¹ [Doc. 27] is hereby **GRANTED**, the trial in this matter is hereby **CONTINUED** to **February 23, 2009**, and the pretrial conference in this matter is reset for **February 17, 2009, at 11:00 a.m.** The Court further finds that all time between the November 3, 2008, hearing and the new trial date of February 23, 2009, is fully excludable time under the Speedy Trial Act. See 18 U.S.C. § 3161(h)(1)(F), (J), -(8)(A)-(B)(i),(iv).

¹The Court notes that the government's motion to continue was originally premised on a scheduling conflict on the part of government counsel, which has since been resolved. However, at the hearing, the government agreed that because of the additional motion to be filed by defense counsel, the matter would need to be continued even in light of the resolution of the government's previous scheduling conflict.

In summary, it is **ORDERED** that:

- (1) The defendant's oral motion to file a motion out of time is **GRANTED**;
- (2) The defendant shall have until and including **November 14, 2008**, to file his motion to suppress, and the government shall have until and including **November 28, 2008**, to file a response to the motion;
- (3) The government's motion to continue [Doc. 27] is hereby **GRANTED**;
- (4) The trial of this matter is reset to commence on **February 23, 2009, at 9:00 a.m.**, before the Honorable Thomas A. Varlan, United States District Judge;
- (5) All time between the November 3, 2008, hearing and the new trial date of **February 23, 2009**, is fully excludable time under the Speedy Trial Act for the reasons set forth above;
- (6) The pretrial conference in this matter is reset for **February 17, 2009, at 11:00 a.m.** before the undersigned; and
- (7) The Court will conduct a hearing on all pending motions on **December 3, 2008, at 9:00 a.m.** before the undersigned.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge